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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,480	12/31/2003	Jayant Chakravarty	18,149	9854

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EXAMINER

MATZEK, MATTHEW D

ART UNIT PAPER NUMBER

1771

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/750,480	Applicant(s) CHAKRAVARTY ET AL.	
	Examiner Matthew D. Matzek	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/16/05, 5/24/04</u> | 6) <input type="checkbox"/> Other: _____ |

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Sugito (EP 933,074).

a. Sugito teaches a disposable diaper comprising a liquid absorbent core **4** that is divided along longitudinal and transverse lines (Abstract, Fig. 4 and [0015]). On top of the core is a topsheet **2**, which may be liquid pervious, and on the back of the absorbent core is a backsheet **3** that may be water impervious ([0016, Fig. 2]). The longitudinal and transverse lines form discontinuous absorbent zones that define four longitudinal channels and five transverse channels. The channels are empty and as such possess a density less than the density of a portion of the absorbent structure adjacent the channels.

2. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Savich (US 4,005,957).

a. Savich teaches a method of forming absorbent fibrous pads comprising areas of lower basis weight than the surrounding areas within the fibrous pads. The pads are for use in products such as disposable diapers, sanitary napkins, and the like (col. 1, lines 15-21). Figures 7 and 8 illustrate areas of high basis weights **62** and low basis weight **64** (col. 6, lines 13-20 and Figures 7 and 8).

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The fibrous pads may be made of wood pulp and artificial fibers such as rayon and polyester that may act as binder fibers upon the application of heat (col. 7, lines 1-8). The longitudinal and transverse lines form discontinuous absorbent zones that define two longitudinal channels and six transverse channels. The channels are made of the same material as the surrounding higher basis weight areas as such possess the same density as the surrounding higher basis weight areas.

Claim Rejections - 35 USC § 102/103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2, 7, 12 and 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sugito (EP 933,074).

Although Sugito does not explicitly teach the claimed feature of the instantly claimed cylindrical compression at yield, it is reasonable to presume that said property is inherent to Sugito. Support for said presumption is found in the use of like materials (i.e. a disposable diaper comprising a nonwoven liquid absorbent fluff fiber core 4 that is divided along longitudinal and transverse lines). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In

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addition, the presently claimed property of cylindrical compression at yield would obviously have been present one the Sugito product is provided. Note *In re Best*, 195 USPQ at 433, footnote (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

4. Claims 2 and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Savich (US 4,005,957).

Although Savich does not explicitly teach the claimed feature of the instantly claimed cylindrical compression at yield, it is reasonable to presume that said property is inherent to Savich. Support for said presumption is found in the use of like materials (i.e. an article comprising nonwoven absorbent fibers with channels that divide the article along longitudinal and transverse lines). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of cylindrical compression at yield would obviously have been present one the Savich product is provided. Note *In re Best*, 195 USPQ at 433, footnote (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

Claim Rejections - 35 USC § 103

5. Claims 3-5, 8-10, 13-15 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugito (EP 933,074) as applied to claims 1, 11 and 21 above. The article of Sugito is silent as to the relative depth and length of the channels within the absorbent article.

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- a. Based upon Figures 2 and 4 channels extend the majority of the length and width of the absorbent article the channels extend a majority of the thickness of the absorbent structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the absorbent structure with channels extending no less than 10 percent and no more than 90 percent of the thickness and no less than 20 percent of the longitudinal or lateral width of the absorbent structure, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.
6. Claims 3-5 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Savich (US 4,005,957) as applied to claims 1 and 11 above. The article of Savich is silent as to the relative depth and length of the channels within the absorbent article.
 - a. Based upon Figure 9 the channels extend the majority of the length and width of the absorbent article the channels extend a majority of the thickness of the absorbent structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the absorbent structure with channels extending no less than 10 percent and no more than 90 percent of the thickness and no less than 20 percent of the longitudinal or lateral width of the absorbent structure, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

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7. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enloe (US 4,761,258).

a. Enloe teaches an apparatus for forming a fibrous web material (Abstract). The apparatus allows the tailoring of areas to have higher basis weights (higher absorbency) and correspondingly lower basis weights (lower absorbency) (col. 1, lines 10-12). The fibrous web may be combined with a liquid pervious inner layer and a liquid impervious outer layer (col. 3, lines 50-60). The fibrous web may be made of an absorbent material such as cellulosic material known as fluff and polymeric fibers such as polypropylene fibers (col. 4, lines 7-14). The polypropylene fibers would act as binder fibers upon the application of heat. The sheet-like grid of Figure 9 may be used to define a plurality of individual conduit cells that have areas of higher basis weights and lower basis weights. The resultant absorbent article would possess the instantly claimed channels within the absorbent core and the channels would possess the same density as the higher basis weight areas because the fibers in the channel are made from the same material as the higher basis weight areas or may have a lower density if the channels possessed no fibrous material. Bases upon the grid of Figure 9 the absorbent structure would have more than four channels, with more than two running in the longitudinal direction and more than two running in the lateral width direction.

b. Although Enloe does not explicitly teach the claimed feature of the instantly claimed cylindrical compression at yield, it is reasonable to presume that

said property is inherent to Enloe. Support for said presumption is found in the use of like materials (i.e. an article comprising absorbent cellulosic fibers with channels that divide the article along longitudinal and transverse lines). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of cylindrical compression at yield would obviously have been present one the Enloe product is provided. Note *In re Best*, 195 USPQ at 433, footnote (CCPA 1977) as to the providing of this rejection made above under 35 USC 102. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80.

c. The article of Enloe is silent as to the relative depth and length of the channels within the absorbent article. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the absorbent structure with channels extending no less than 10 percent and no more than 90 percent of the thickness and no less than 20 percent of the longitudinal or lateral width of the absorbent structure, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

8. Claims 6, 16-20 and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugito (EP 933,074) as applied to claims 1, 11 and 21 above further

in view of Schilkowski (US 6,407,309). The invention of Sugito is silent as to the use of binder material to form inter-fiber bonds within the absorbent structure.

- a. Schilkowski teaches an inexpensive sheet or web shaped fiber material for use in sanitary napkins comprising cellulosic fibers and thermoplastic binder fibers. The binder fibers are used to prevent the short fibers from "dusting" out of the material (Abstract).
- b. Since Sugito and Schilkowski are from the same field of endeavor (i.e. absorbent articles), the purpose disclosed by Schilkowski would have been recognized in the pertinent art of Sugito.
- c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the article of Sugito with the binder fibers of Schilkowski motivated by the desire to prevent the "dusting" of the absorbent cellulosic fibers.

Double Patenting

9. Claims 1-29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-31 of copending Application No. 10/460,882 in view of Sugito (EP 933,074). Both the instant application and the applied application are directed to absorbent articles for use in personal care items. The claimed absorbent articles comprise topographies that possess channels in both the longitudinal and lateral directions. Sugito teaches a disposable diaper comprising a liquid absorbent core 4 that is divided along longitudinal and transverse lines (Abstract, Fig. 4 and [0015]). On top of the core is a topsheet 2, which may be

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liquid pervious, and on the back of the absorbent core is a backsheet 3 that may be water impervious ([0016, Fig. 2). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the article of the instant application by incorporating a liquid pervious topsheet and liquid impervious backsheet motivated by the desire to create an absorbent personal article.

This is a provisional obviousness-type double patenting rejection.

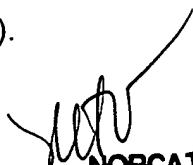
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdm



NORCA TORRES
PRIMARY EXAMINER